

JOHN M. KELLY

IBLA 71-8

Decided April 17, 1972

Appeal from decision (NM 12007) of New Mexico state office rejecting bid made in competitive oil and gas sale.

Affirmed.

Contracts: Formation and Validity: Bid Award--Oil and Gas Leases:
Competitive Leases

Where the notice of competitive bidding for upland oil and gas leases reserves to the Government the right to reject any and all bids and further states that any bonus bid considered as inadequate on the basis of the estimated value of the parcel will be rejected, a bonus bid of \$10.95 per acre for land, whose oil and gas bonus value is estimated to be \$20 per acre, may properly be rejected.

APPEARANCES: John M. Kelly, pro se.

OPINION BY MR. FISHMAN

Mr. John M. Kelly has appealed from a decision dated July 30, 1970, of the New Mexico state office of the Bureau of Land Management, rejecting his bid for parcel 8, offered for competitive lease sale on June 16, 1970.

The appellant bid \$10.95 per acre or a total of \$438.00 for the 40-acre parcel, described as the NW 1/4 SW 1/4 sec. 17, T. 9 S., R. 35 E., N.M.P.M., New Mexico. Lower bids were received for the same parcel from Rebel Oil Company (\$420), Ernest A. Hanson (\$302), and Tom L. Ingram (\$220.50).

The appellant states that: (1) the sale was given wide publicity; (2) four bids were received from knowledgeable residents of the area; (3) the Bureau of Land Management did not place a minimum bid value on the tract prior to the sale; (4) the State of New Mexico will

accept bids of \$10 per acre or more on state lands in Lea County (embracing the land in issue); and (5) the value of an oil and gas lease is the value that two or more knowledgeable persons place on the lease as of the time of sale, and should not be based upon nearby leases of previous sales, or upon the value that the lease might attain after further development in the area.

The notice of sale provided in applicable portion as follows:

The right is reserved to reject any and all bids. Any bonus bid considered as inadequate on the basis of the estimated value 1/ of the parcel will be rejected.

The overriding issue in the case at bar is the authority of the Department to exercise its discretion in a manner which results in the rejection of all bids for a particular parcel, where it has reserved that right in the notice of sale. Humble Oil and Refining Company, 4 IBLA 72 (November 8, 1971), supports the view that the Department has such authority. See 43 CFR 3120.3-1 2/ (35 F.R. 9693 of June 13, 1970) which states that "* * * the authorized officer, subject to his right to reject any or all bids, will award the lease to the successful bidder." See Annot., 31 A.L.R.2d 471, 489 (1953).

The thrust of the appellant's arguments is that his bid is not dissonant with the fair market value of the parcel, citing the wide publicity given the sale, bids by four informed parties, and the practice of the State of Mexico in accepting similar bids for state lands in that county for \$10 per acre or more. Concededly, these factors have some probative effect to establish the fair market lease value of the parcel. However, there is nothing in the record to establish that the \$20 per acre minimum bid was not fairly arrived at in good faith. Cf. Annot., 31 A.L.R.2d at 483 (1953). The appellant's request for oral argument is denied, since it does not appear that it would serve any useful purpose.

1/ The estimated value of the tract was fixed by the Geological Survey at \$20 per acre or \$800.

2/ The same provision appears in 43 CFR 3120.3-1 (1972).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Frederick Fishman, Member

We concur:

Joseph W. Goss, Member

Anne Poindexter Lewis, Member

